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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1037

THOMAS FLEMING,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For A Writ Of Certiorari
To The
Supreme Court Of Illinois.

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Petition For A Writ Of Certiorari To The Supreme Court Of Illinois.

To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States

The petitioner, Thomas Fleming, prays that a writ of certiorari be issued to review the decision of the Supreme Court of the State of Illinois.

JUDGMENT AND OPINION.

The judgment of the Circuit Court of Cook County was entered on October 16, 1963 finding the appellant guilty of the crime of unlawful possession of narcotics.

The opinion of the Supreme Court of the State of Illinois, affirming the judgment of the Circuit Court of Cook County was filed November 19, 1965 and is set forth in the Appendix.

JURISDICTION.

The opinion of the Supreme Court of the State of Illinois, was filed November 19, 1965.

The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3) and Rule 22 of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED.

Whether "reasonable grounds," within the meaning of the Fourth Amendment to the Constitution, exist when a police officer arrests a defendant, without any knowledge on the part of the officer of the commission of a crime, and of the identity of the defendant. except the information supplied by an informer whom the arresting officer does not know to be reliable; and where the only corroboration of the reliability of the informer consists in the fact that the arresting officer saw the defendant in the public tavern where the informer announced that the defendant could be found.

STATEMENT OF THE CASE.

The defendant, Thomas Fleming, was indicted in the Circuit Court of Cook County for unlawful possession of a narcotic drug. At his trial the Circuit Court of Cook County denies his motion to suppress narcotic packages seized upon his person, on the basis that his arrest without a warrant was illegal and that the evidence obtained incidental thereto was improperly admitted in evidence against him in violation of the Fourth Amendment to the Constitution.

The Supreme Court of Illinois took jurisdiction against the contention of the Attorney General of the State of Illinois that no constitutional question was raised by the defendant.

The appeal to the Supreme Court of the State of Illinois proceeded upon the two questions whether a crime had been committed in fact and whether the arresting officer had reasonable grounds to believe that the defendant had committed said crime.

The Supreme Court of the State of Illinois entered its opinion on November 19, 1965, affirming the judgment of the Circuit Court of Cook County on the grounds that, although there was no testimony that the informer had given accurate tips on previous occasions, the fact that the informer met the officers by pre-arrangement at a designated time and place and that when the officers entered the tavern, they saw the defendant who matched the description given by the informer, was enough evidence of the informer's reliability to justify

reliance on his statement that a crime had been committed and that the defendant was the person who had committed said crime.

The record, however, discloses that the arresting officers did not know the informer, had never had any dealings with him, had no knowledge of the existence of the defendant, and when the informer gave them a package, they did not field test it to determine its contents, nor that the contents had ever been tested, in short had no personal knowledge of any of the information supplied by the informer.

REASONS FOR GRANTING THE WRIT.

The decision of the Supreme Court of Illinois violates the constitutional guarantees of the Fourth Amendment as enforceable against the states through the Fourteenth Amendment. *Mapp* v. *Ohio*, 367 U.S. 646-647; *Ker* v. *State of California*, 374 U.S. 23, 30.

The position of the Supreme Court of Illinois, would nullify every standard of reliability heretofore imposed by this court. Here the arresting officers knew nothing of the appellant, they had no personal knowledge derived from observation or otherwise of the alleged illicit acts of the appellant and had no basis in experience for confidence in the reliability of the informer's information, he had never before given information. *Wong Sun* v. *U. S.*, 371 U.S. 471, 480.

The Supreme Court of Illinois finds that although there was no proof of the reliability of the informer, there were several factors which justified reliance on the information given by the informer, and lists substantially three factors.

> The first being that the informer delivered to the arresting officers a tin-foil package of a type used in illicit narcotics traffic.

Since the police officers did not have an uninterrupted view of the informer and did not at any time see the informer in the presence of the defendant, the mere delivery of a package, untested, and apparently unopened, adds slight weight to the proof of reliability for only

the word of the informer defined the contents and the origin of the package.

> Second, that the informer had kept his word by meeting the officers on the night of the arrest.

The court apparently raised an inference that that fact contributes to the proof of reliability of the informer. However, in each and every case where an informer gives information to an arresting officer, the informer must be present to do so, irrespective of the reliability or unreliability of his information. No inference of reliability of an informer can be justifiably raised because the informer is present to give the information.

> Third, the only information given by the informer which the arresting officers had occasion to verify immediately prior to the arrest was the description of the defendant.

Apparently the Supreme Court of Illinois patterned its reasoning after the dissenting opinion of Justice Harlan in *Beck* v. *State of Ohio,* 379 U.S. 89, 99. But the facts there were substantially different, the officer knew the defendant, he knew the defendant had a previous record of arrests or convictions for the very same offense for which he was arrested in this case. The arresting officer knew the defendant and had a picture of him.

Appellant contends that the officers had no basis in experience for confidence in the reliability of the informer's information, and that lack of reliability was not remedied by any event which occurred in the presence of the officers. *Beck* v. *State of Ohio,* 379 U.S. 89, 99.

The officers were in fact nothing but the arresting arm of the informer.

Mr. Justice Butler in *Go-Bart Importing Co. et al* v. *United States,* 282 U.S. 344, 357 stated that "the Amendment is to be liberally construed, and all owe the duty of vigilance for its effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted."

And, such duty of vigilance demands on the part of arresting officers that they take some steps toward the corroboration of information given by an informer, and not rely exclusively on such information when the reliability of the informer had not been otherwise determined.

CONCLUSION.

Petitioner respectfully submits that his arrest cannot on the record be squared with the demands of the Fourth and Fourteenth Amendments.

Respectfully submitted,

JEWEL LAFONTANT,
Counsel for Petitioner.

February 15, 1966.

APPENDIX A

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, *houses, papers,* and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV

No State shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 22. Review on Certiorari Time for Petitioning

A petition for writ of certiorari to review the judgment of a state court of last resort in a criminal case shall be deemed in time when it and the certified record required by Rule 21 are filed with the clerk within ninety days after the entry of such judgment. A justice of this court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding sixty days.

(Statutes Involved)

28 U.S.C. 1257(3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

By writ of certiorari where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

APPENDIX B

Docket No. 39111—Agenda 18—September, 1965.

The People of the State of Illinois, Appellee,
v.
Thomas Fleming, Appellant.

Mr. JUSTICE HERSHEY delivered the opinion of the court:

The defendant, Thomas Fleming, was indicted in the circuit court of Cook County for unlawful possession of a narcotic drug. At his trial the court denied his motion to suppress certain evidence, and upon a finding of guilty by a jury he was sentenced to a term of 2 to 5 years in the penitentiary. On this appeal he contends that his arrest without a warrant was illegal, and that the evidence obtained incidental thereto was improperly admitted in evidence against him.

Chicago police officer Charles Jackson testified that on December 6, 1963, he was introduced by another police officer to an informer named Tommie Brown. Officer Jackson and the informer had a brief conversation during which defendant's name was mentioned. The informer agreed to meet officer Jackson at the corner of 63rd and State Streets at 8:00 P.M. three nights later. On December 9, officer Jackson and officer Carl Willis met the informer at the prescribed time and place and drove in a patrol car to the corner of 59th and State streets where they parked beneath the elevated tracks. Brown told the officers that "he knew a man by the name of Fleming who was engaged in selling narcotics in the Shalimar Lounge at 5902 South State Street."

The officers searched the informer's clothing and discovered he had no narcotics in his possession. They then gave him marked paper currency and waited in the patrol car while the informer entered the nearby Shalimar Lounge. About 5 minutes later, the informer came out of the tavern and returned to the patrol car where he delivered to the officers a tin-foil package containing a white powder. No field test was performed on the white powder, although officer Jackson testified that the tin-foil package was "the customary type of package used in the trade of selling narcotics". Brown told the officers that he had purchased the package from defendant. He also gave a description of defendant, and told the officers that defendant was standing at the bar at the west end of the tavern. The informer then departed and was never seen or heard from thereafter.

The officers went into the tavern and saw defendant, who matched the description given by the informer, standing at the place specified by the informer. He was then arrested without a warrant. A subsequent search of his person disclosed the marked paper currency and 16 tin-foil packages, one of which was later found to contain heroin.

Defendant contends that his arrest without a warrant was unlawful and that all evidence discovered in the course of the search incidental thereto should therefore have been suppressed. In particular, he relies upon the statute in effect at the time of his arrest which provides that an arrest may be made "by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested had committed it." (Ill. Rev. Stat. 1963, chap. 38, par. 657.) Defendant argues (1) that prior to his arrest there was no field test of the white powder and therefore no evidence that a crime had "in fact" been

committed and (2) that there were no facts to give the arresting officers reasonable grounds to believe that defendant had committed the crime.

We do not think the statute here involved requires that the facts must establish with absolute certainty that a crime has in fact been committed before a police officer may make an arrest without a warrant. Seldom, if ever, would such a situation exist. It is enough if the facts are such that a reasonable and prudent police officer could conclude that a crime has been committed and that defendant committed it. *People* v. *La Bostrie,* 14 Ill. 2d 617.

Under the circumstances in the case now before us, we do not think that a field test of the white powder was essential to a conclusion that a crime had been committed. (*People* v. *Redding,* 28 Ill. 2d 305; *People* v. *Boozer,* 12 Ill. 2d 184.) The tin-foil package delivered to the officers by the informer was the customary type of package used by narcotics peddlers. In our opinion this fact, coupled with the informer's statement that he had purchased the package from defendant in the tavern, was sufficient to lead officers Jackson and Willis to the conclusion that the crime of illegal possession of narcotics had been committed.

Defendant further contends that the arresting officers relied entirely on the tip of an unknown informer whose reliability had not been established and that the officers therefore did not have reasonable grounds to believe that defendant had committed the crime. Defendant places reliance on our previous decisions in *People* v. *Pitts,* 26 Ill. 2d 395, and *People* v. *Parren,* 24 Ill. 2d 572, wherein we held that police officers are not justified in making an arrest without a warrant solely on the basis of an anonymous in-

former's tip without some independent corroboration of the accuracy of the tip. The instant case differs, of course, from the *Pitts* and *Parren* cases in that we are not here concerned with a tip from an anonymous source. Here, the officers received their information during a meeting with a known informer. Although there was no testimony that the informer had given accurate tips on previous occasions, there were several factors which, in our opinion, justified reliance on the tip. The informer met the officers by prearrangement at a designated time and place. He then went into a tavern where he said defendant was selling narcotics and returned with a tin-foil package of a type used in illicit narcotics traffic. He stated that he had purchased the package from the defendant and gave the officers a complete description of the defendant, including a description of where he was standing in the tavern. When the officers entered the tavern, they saw the defendant who matched the description and who was standing at the place the informer said he would be, Thus, at this point, the informer had kept his word by meeting the officers on the night of December 9, 1963, as previously agreed, had apparently given accurate information that someone was selling narcotics in the Shalimar Lounge, and had given an accurate description of a man whom the officers found inside the tavern. We think that this was enough evidence of the informer's reliability to justify reliance on his statement that defendant was the person who had sold the narcotics.

The facts in this case are substantially identical to those in *People* v. *Redding*, 28 Ill. 2d 305, wherein we held an arrest to be valid under circumstances essentially identical to those in this case. We conclude that police officers Jackson and Willis were confronted with sufficient facts from

which they could reasonably conclude that a crime had been committed and that defendant had committed it. Defendant's arrest was lawful, and the trial court did not err in denying defendant's motion to suppress the evidence obtained in the course of the search incident to that arrest.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.